

**Information & Communications Technology
Authority**

**Public Consultation on
Indirect Access (Ref: CD (2003) 7**

**Response to Interrogatory 3D on behalf of
WestTel, Limited**

**Rob Frieden
Professor of Telecommunications and Consultant
Penn State University
102 Carnegie Building
University Park, Pennsylvania
United States 16870**

31 August 2004

Public Consultation on
Indirect Access (Ref: CD (2003) 7

Response on behalf of WestTel., Limited
to ICTA Document 80/105-07

31 August 2004

1. WestTel, Limited (“WestTel”), through its telecommunications consultant, hereby submits the following response to Interrogatory 3D contained in ICTA Document 80/105-07 dated 16 August 2004:

Provide your company’s views, with justification, as to whether restrictions of this nature are:

- i) inconsistent with the requirement, under the ICTA Law (2004 Revision), that the Authority “promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so” (subsection 9(3)(a)) and “promote and maintain an efficient, economic and harmonized utilization of ICT infrastructure” (subsection 9(3)(h);
- ii) represent either an abuse of dominant position or an anti-competitive practice, contrary to the provisions of the ICTA Law (2004 Revision) and C&W’s License, by, for example, “limiting production, markets or technical development to the prejudice of consumers” or “imposing . . . unfair trading conditions.” (Condition 15.2 of C&W’s License).

Response to Interrogatory 3.D)i

2. As a threshold matter, WestTel wishes to emphasize the need for the Information and Communications Technology Authority (“ICTA” or “the Authority”) to ensure that no carrier can use the tariffing process to circumvent Cayman law and ICTA regulations and policies. The proposed tariff provisions of Cable & Wireless (Cayman Islands) Ltd. (“C&W”) referenced in Interrogatory 3.D) by ICTA, impose restrictions that would foreclose several types of indirect access even before the Authority has decided whether such restrictions comport with the ICTA Law and the Authority’s regulations and policies.

3. The tariffing process should constitute a relatively perfunctory and straightforward process of memorializing non controversial terms and conditions relating to the provisioning of a service. Tariff sheets should not contain surprises that substantially limit the flexibility and options available to consumers, and to other carriers that on occasion may have to take service from C&W on a retail or wholesale basis in lieu of a carrier-to-carrier agreement.

4. C&W's proposed tariff language would impose an absolute bar on using domestic retail and wholesale services to access international ICT services provided by a competitor of C&W. Such a restriction makes no technological or commercial sense as services, such as Asymmetric Digital Subscriber Line, have to link a domestic service with an off-island international service in order to provide consumers with fully functional service. In the case of Asymmetric Digital Subscriber Line service, consumers typically expect to secure access to the Internet cloud, the vast majority of which exists internationally. Such access can occur by linking the domestic and international legs provided solely by C&W, or jointly with C&W providing the domestic link and another licensed carrier providing the international leg. No technological reason supports a requirement that in effect reserves for C&W the "right" to force consumers to use C&W services for both the domestic and international legs of an integrated service.

5. C&W's proposed tariff language also would impose limitations on the scope of permissible services consumers can derive from transport services. In a digital environment no technological rationale supports limiting consumers to certain types of bit transmission while rendering illegal other types of bitstreams. Such a tariffed-based restriction cannot be easily enforced as carriers cannot readily distinguish between a packet-switched voice bitstream and other types of "permissible" data bitstreams.

6. Moreover, C&W's proposed tariff language attempts to reserve for C&W any use of the Internet for voice services. So called Voice Over the Internet Protocol ("VOIP") services are becoming readily available via digital subscriber lines, cable modems, leased private data circuits and ISDN lines. The carrier providing the domestic line for a link to a VOIP service has no technological or legal basis to demand that consumers use its international ICT services.

7. WestTel can understand the need for a tariff-based restriction aiming to foreclose end user access to unlicensed operators offering VOIP and other services in violation of Cayman law. However, nothing in the proposed C&W tariff language limits access to unlicensed international ICT services. Instead C&W seeks to prevent domestic data service customers from using C&W data lines to interconnect with a licensed international data service carrier, or to provide resale domestic or international services.

8. C&W's proposed tariff-based restrictions unnecessarily and unreasonably would foreclose the development of competition in international ICT services, particularly ones using the Internet for off-island data transport. Because most telecommunications services have the potential for carriage via the Internet in the near term future, C&W's proposed tariff restrictions would have a substantial deleterious impact on the prospect for competition. The proposed tariff restrictions would unlawfully frustrate competition in violation of ICTA Law subsection 9(3)(a) by preventing most C&W domestic data services customers from linking their lines with the data services of C&W international ICT service competitors.

9. Likewise, these restrictions would trigger inefficient ICT network utilization, in violation of ICT Law subsection 9(3)(h). By denying their customers the opportunity to use C&W domestic facilities to interconnect with international ICT services of another customer, C&W seeks to preclude an ICT service provider from being able to offer service unless and until the

ICT service provider has installed both domestic and international ICT service legs, or has persuaded the C&W domestic ICT service consumer to abandon C&W entirely. In the first scenario competition would arise only if and when a facilities-based alternative to C&W became available. In the latter scenario C&W facilities would lie fallow unless C&W retrofitted them for lease by a carrier competitor. In both situations C&W will have been able to adversely impact the nature and scope of competition. Ironically C&W possibly will trigger the existence of “stranded” investment in its unused facilities by invoking tariff language to prevent consumers from using C&W data service for access to other carriers’ international data services.

Response to Interrogatory 3.D)ii

10. WestTel. believes that the tariff restrictions proposed by C&W constitute an unnecessary and unwarranted anticompetitive practice. C&W has not offered any justification for limiting its customers’ access to international ICT services of another carrier. One can readily infer that C&W seeks to use tariff language, which most consumers would rarely if ever examine, to enhance the prospect that its customers would have to continue using C&W services exclusively despite the availability of attractive and less expensive competitive alternatives.

11. If the Authority allows the proposed tariff restrictions to come into force, C&W will be able to shore up its services, particularly voice telephony, but only by foreclosing Cayman consumers from using new Internet-based service alternatives including VOIP. These restrictions attempt to deem impermissible the use of new technological innovations, e.g., packet-switched voice service, despite the fact that C&W itself might offer such a service in the future. It appears that these restrictions seek to thwart C&W customers and competitors from exploiting new ICT service alternatives unless and until C&W decides to offer them.

12. The Authority should appreciate that any such artificial restrictions on the use of cutting edge ICT technologies in the Cayman Islands may render the country competitively and comparatively less attractive vis a vis other nations in the region that refuse to allow the dominant incumbent carrier to impose such restrictions. In light of the fact that the Cayman Islands already host sophisticated users and providers of electronic commerce and other ICT services, it makes no sense to permit C&W to foreclose the fullest and most robust use of digital ICT technologies, including ones that provide voice telephony at lower costs.

13. WestTel believes that the tariff restrictions proposed by C&W would limit and delay the public availability of digital ICT services to the detriment and prejudice of consumers. Similarly, these restrictions constitute an unfair trading condition by restricting consumers the option to pick and choose the services of all ICT service providers including the option of linking a domestic C&W data line with an international ICT service provided by a competitor of C&W.

Respectfully submitted,

Rob Frieden
Telecommunications Consultant for
WestTel, Limited